

****NOT FOR PRINTED PUBLICATION****

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

POLLY A. GRAVES-TAYLOR,

Plaintiff,

V.

AON HEWITT GARNISHMENT SERVICES,

Defendant.

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CASE NO. 4:13-CV-754
Judge Clark/Judge Mazzant

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On April 17, 2014, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations regarding Hewitt Associates LLC's Motion to Set Aside Clerk's Entry of Default, Motion to Quash Service of Process, Motion to Dismiss, and, in the alternative, Motion for a More Definite Statement [Doc. #10] and Plaintiff's Motion for Default Summary Judgment and Motion to Set Aside Respondent Extension [Doc. #11]. The Magistrate Judge recommended that Hewitt Associates LLC's Motion to Set Aside Clerk's Entry of Default, Motion to Quash Service of Process, Motion to Dismiss, and, in the alternative, Motion for a More Definite Statement be granted in part and that the clerk's entry of default against "Aon Hewitt Garnishment Services" be set aside. The Magistrate Judge ordered that Plaintiff file an amended complaint setting forth the correct defendant as well as all facts

supporting her claims. The Magistrate Judge also instructed Plaintiff to set forth facts supporting this court's subject matter jurisdiction. The Magistrate Judge indicated that if Plaintiff named the correct defendant in the amended complaint, the court would not require Plaintiff to re-serve Defendant. The Magistrate Judge recommended that Plaintiff's Motion for Default Summary Judgment and Motion to Set Aside Respondent Extension [Doc. #11] be denied.

On April 23, 2014, Plaintiff filed objections [Doc. #24]. Plaintiff's objections are not specific and fail to point out how the Magistrate Judge erred. The Magistrate Judge correctly found that there is good cause to set aside the clerk's entry of default and that this case should be addressed on the merits, making a default judgment inappropriate in this case. Defendant was not required to respond if service was not made correctly. Plaintiff offers no reason why the Magistrate Judge erred.

Having received the report of the United States Magistrate Judge, and considering the objections thereto filed by Plaintiff, this court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the court.

It is, therefore, **ORDERED** that Hewitt Associates LLC's Motion to Set Aside Clerk's Entry of Default, Motion to Quash Service of Process, Motion to Dismiss, and, in the alternative, Motion for a More Definite Statement [Doc. #10] is **GRANTED** in part, and the clerk's entry of default against "Aon Hewitt Garnishment Services" is **SET ASIDE**.

It is further **ORDERED** that Plaintiff's Motion for Default Summary Judgment and Motion to Set Aside Respondent Extension [Doc. #11] is **DENIED**.

It is further **ORDERED** that Plaintiff shall file an amended complaint within fourteen

(14) days of entry of this Order, setting forth the correct defendant as well as all facts supporting her claims. Plaintiff should also set forth facts supporting this court's subject matter jurisdiction. If Plaintiff names the correct Defendant in the amended complaint, the court will not require Plaintiff to re-serve. Failure to file an amended complaint will result in the immediate dismissal of this case.

It is further **ORDERED** that the Motion for Amended Summary Judgment Following 26(f) Conference and Initial Mandatory Discovery by Polly A. Graves-Taylor [Doc. #29] is **DENIED** as premature. Plaintiff shall not file any additional motions for summary judgment until an amended complaint is filed and the court determines it has jurisdiction over this case.

So **ORDERED** and **SIGNED** this **2** day of **July, 2014**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge